



September 7, 2000

Mr. Joe Fuentes
Mid Valley Academy
P.O. Box 115
Mercedes, Texas 78570

OR2000-3456

Dear Mr. Fuentes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138923.

You state that the Mid Valley Academy ("Mid Valley"), as a component of the Student Alternatives Program, Inc. ("SAPI"), received a request for information pertaining to former personnel for the five-year period ending June 19, 2000.¹ You state that Mid Valley intends to release information responsive to all but one of the requested categories of information, and only dating back to November 1998. You claim information predating November 1998 is not subject to the Public Information Act (the "Act"). Moreover, you claim that to the extent information responsive to the request is subject to the Act, meaning information dating from November 1998 to June 19, 2000, portions are excepted from disclosure under sections 552.101 and 552.102 of the Government Code.

First, we address your concern that information responsive to the request that predates November 1998 is not subject to the Act. "Public information" subject to the Act is defined in pertinent as:

information that is collected, assembled, or maintained . . . in connection with the transaction of official business:

(1) by a governmental body; or

¹You assert that the request applies only to Mid Valley records, as distinguished from records of other SAPI charter schools and unrelated programs. We agree. Therefore, this ruling applies only to Mid Valley records.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code §552.002(a). A "governmental body" is defined in pertinent part as, "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds. Gov't Code §552.0003(1)(A). You explain that Mid Valley is a subsidiary of the SAPI, a Texas nonprofit corporation. You further state in November 1998, SAPI became designated as a charter school and has therefore been receiving funding from the Texas Education Agency ever since. Consequently, SAPI and Mid Valley have been governmental bodies for the purposes of the Act only since November 1998. We agree that because Mid Valley has only been a governmental body under the Act since November 1998, its records predating November 1998 do not constitute public information under the Act. Accordingly, we find that Mid Valley has no obligation under the Act in regard to information responsive to the request that predates November 1998.

However, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records a copy of the written request for information and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You did not, however, submit to this office a copy of the written request for information or a copy of the specific information requested. Therefore, you have failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not submitted the information at issue, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information at issue is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 138923

**cc: Mr. Kevin Howard
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